



PATENT V.0005P

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Elia Rocco Tarantino)
Appl. No. : 10/810,782)
Filed : March 26, 2004)
For : GAME USING SECONDARY)
INDICIA PROVIDING GAME)
STATUS INFORMATION)
Examiner : Malina K. Rustemeyer)

Group Art Unit 3714

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on

February 4, 2010

(Date)

R. Scott Weide, Reg. No. 37,755

REPLY BRIEF

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sirs:

Applicant hereby files this Reply Brief in response to the Examiner's Answer dated December 8, 2009.

Appl. No. : 11/406,814
Filed : April 19, 2006

I. STATUS OF CLAIMS

Claims 1-9 are pending in the application.

Claims 10-15 are cancelled.

Claims 16 and 17 are pending in the application.

All pending claims, namely Claims 1-9 and 16-17, were rejected in the Office Action mailed May 8, 2009, and are subject to this appeal.

Appl. No. : 11/406,814
Filed : April 19, 2006

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

There are 2 grounds of rejection presented for review:

- (1) Rejection of Claims 1, 6, 8, 9, 16 and 17 under 35 U.S.C. § 103(a) as unpatentable over Luciano, Jr. (US Pub. 2003/0232638) in view of Beaulieu et al. (US Pub. 2003/0017865); and
- (2) Rejection of Claims 2-5 and 7 as being unpatentable over that combination in further view of Bennett et al. (WO 2000/32286).

Appl. No. : 11/406,814
Filed : April 19, 2006

III. ARGUMENTS

A. Rejection of Claims 1, 6, 8, 9, 16 and 17 35 U.S.C. § 103(a) as being *unpatentable* over Luciano, Jr. in view of Beaulieu et al.

In the Examiner's Answer, the Examiner has admitted that Luciano, Jr. fails to teach removing a first indicator (which designates a player selected number) and for each game number which matches a player number displaying a match indicating secondary indicia, the match indicating secondary indicia not including the first indicator, and as to each player number which is not matched by a game number removing the first indicator and displaying non-match indicating secondary indicia in association with the unmatched player number. (See Examiner's Answer at paragraph 1 of page 5).

The Examiner asserts that Beaulieu teaches removing a first indicator and displaying a match indicating secondary indicia in association with a matched player number, and removing the first indicator and displaying a non-match indicating secondary indicia not including the first indicator, the non-match indicating secondary indicia having an attribute indicating to the player that the player number was not matched. The Examiner asserts that the invention is obvious in view of Luciano, Jr. modified by the teachings of Beaulieu.

Appellant disagrees. Beaulieu discloses at Figures 13-19 and the associated description thereof a reel-type slot game in which game symbols are displayed corresponding to each slot reel. First, Beaulieu does not even disclose a game in which game numbers are compared to player

Appl. No. : 11/406,814
Filed : April 19, 2006

numbers for matches. Instead, in Beaulieu's slot game a combination of game numbers determines the outcome of the game.

Second, because Beaulieu's game does not involve matching game numbers to player numbers, Beaulieu does not disclose or suggest removing and replacing originally displayed symbols or indicators with secondary symbols indicating a match or no match.

To the contrary, Beaulieu discloses displaying game symbols in succession (as each reel stops). Those displayed game symbols may have a level of animation associated with how close the combination of game symbols is to a winning or losing combination. Thus, as illustrated in Figures 15 and 16, when a player moves one step closer to a winning combination, the game symbols may be further animated.

In this configuration, Beaulieu first does not display a first indicia and then, depending upon whether a match is received or not, remove and replace that indicia with a secondary indicia indicating a match/win or no match/loss. The animation of Beaulieu's symbols change not based upon whether they were matched or not matched, but based upon the results of successive reel spins relative to a potential game outcome. This is evident from Figure 19 of Beaulieu which shows a player receiving a "cherry" game symbol on the last reel. That game symbol is not matched to a player number and it is not removed and replaced with a match indicating or non-match indicating indicator. Instead, all that happened when that "cherry" game symbols was received was that other of the game symbols were animated to reflect that the game symbols did not achieve a winning combination of symbols.

Appl. No. : 11/406,814
Filed : April 19, 2006

Though Examiner notes that Beaulieu teaches that “similar modifications” can be made for other games including keno games, it is at the very least unclear as to how the teachings of Beaulieu could be applied to a keno type game. In a keno game the outcome of the game is determined by matches of particular game numbers to particular player numbers, which matches (or non-matches) are static through the game (i.e. once a game number matches a player number, that match is a match or win, and that fact does not change based upon whether other game numbers and player numbers match or do not match). Therefore, with regard to a keno game, Beaulieu’s concept of animating symbols to indicate that combinations of symbols are close to a winning result has no applicability (in keno, there are matches or not, and no “getting close” outcomes).

Appellant asserts that any perceived applicability of Beaulieu to Luciano, Jr. merely arises from the improper use of hindsight. In particular, because Beaulieu is directed to an entirely different concept and invention than the present invention and Luciano, Jr., Appellant asserts that one of ordinary skill in the art would not view Beaulieu as applicable unless one were already aware of the present invention and one was trying to, in reverse, find each of the features of the invention.

B. Rejection of Claims 2-5 and 7 under 35 U.S.C. § 103(a) as being *unpatentable* over Luciano, Jr. in view of Beaulieu et al. in view of Bennett et al.

Appellant maintains the original arguments detailed in its Appeal Brief relative to this ground of rejection. In addition, in that the foundational basis of rejection based upon Luciano, Jr. and Beaulieu fails for the reasons stated above, this ground of rejections similarly fails.

Appl. No. : 11/406,814
Filed : April 19, 2006

Summary

Applicant requests allowance of pending Claims 1-9 and 16-17 for the reasons advanced above.

Dated: February 4, 2010

Respectfully submitted,

By: 

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